



**Written Submission**  
**for the**  
**Royal Society for the Protection of Birds**  
**Response to the Examining Authority's First Written Questions**  
**(ExQ1)**

**Submitted for Deadline 2**  
**4 March 2025**

**Planning Act 2008 (as amended)**

**In the matter of:**  
**Application by North Falls Limited for an Order**  
**Granting Development Consent for the North Falls Offshore Wind Farm**

**Planning Inspectorate Ref: EN010119**  
**RSPB Registration Identification Ref: 20051053**

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## 1. Introduction

- 1.1. The RSPB's response to the Examining Authority's First Written Questions (ExQ1) are set out in the table below.

## Responses to the Examining Authority's First Written Questions

ExQ1	Question to:	Question	RSPB response
<b>ECOLOGY – BASELINE/INFORMATION</b>			
Q10.1.12	The Applicant RSPB Natural England Nature Scot IPs	<p><b>Ornithology/methodology</b></p> <p>To the Applicant - provide the following to the Examination:-</p> <ul style="list-style-type: none"> <li>(i) Clarification/ further explanation of the specific methodology for all digital aerial survey work applied in the examination inclusive of regard to industry best practice (and what this entails) having regard to the full RR commentary of RSPB and NE. This should include: how spatial autocorrelation has been evaluated; disturbance from the survey itself; all quality assurance measures adopted.</li> <li>(ii) A fuller explanation/account of the methodology of applying macro avoidance correction factor to predicted Northern Gannet populations and the rationale to the Applicant's steps/choices in this regard including best practice advice. This should include regard to: season variation.</li> <li>(iii) Signpost in the ES/ further clarify why Kittiwake collision mortality has been excluded at Flamborough and Filey Coast SPA having regard to the findings/experience of recent Belgian offshore windfarms toward</li> </ul>	

ExQ1	Question to:	Question	RSPB response
		<p>collision rates referred to by other Examination parties.</p> <p>(iv) Clarify/sign post the full and precise conservation 'objectives' of the Outer Thames Estuary SPA considered by the ES.</p> <p>(v) Provide an update regarding the potential for wider ecological impacts through changes in water column stratification arising from the wind farm which 'may' affect birds of prey.</p> <p>(vi) <b>RSPB/IPs:</b> with respect to the above points (i)-(v) whatever additional comments you wish to make are invited. Highlight any specific conservation objectives of the Outer Thames Estuary SPA that may be missing from the Applicant's assessment (if that is the case).</p> <p>(vii) <b>NE/NS/RSPB:</b> the applied reduction of 70% to the baseline densities inputted into the Northern Gannet collision risk modelling to account for macro avoidance by amending the avoidance rates used in the collision risk modelling agreed at scoping stage is contended by the RSPB. What are the specific technical reasons NE have endorsed this approach, but the RSPB do not consider it appropriate?</p> <p>Provide an update regarding the potential for wider ecological impacts through changes in water column stratification arising from the wind farm which 'may' affect birds of prey.</p>	<p>(vi)</p> <p>In addition to our comments in the Relevant Representation with regard to Digital Aerial Survey, the RSPB would also highlight the review and subsequent guidance carried out by a sub-group of NatureScot's Scientific Advisory Committee which provides more detail on these concerns (<a href="https://www.nature.scot/doc/offshore-wind-ornithological-impact-assessment-review-digital-aerial-survey-methods">https://www.nature.scot/doc/offshore-wind-ornithological-impact-assessment-review-digital-aerial-survey-methods</a>)</p> <p>The RSPB would highlight the conservation objective of the Outer Thames Estuary SPA, to maintain the distribution of qualifying features within the site. This objective is unlikely to be fulfilled if there are distributional responses (such as displacement) by red-throated divers to the presence of turbines.</p> <p>(vii)</p> <p>The RSPB set out its reasoning with regard to the Gannet macro-avoidance Correction Factor in its</p>

ExQ1	Question to:	Question	RSPB response
			<p>Relevant Representation and repeats its position below.</p> <p>The Applicant has applied a reduction of 70% to the baseline densities inputted into the Northern Gannet collision risk modelling in order to account for macro-avoidance by amending the Avoidance Rates used in Collision Risk Modelling. This approach follows the scoping advice of Natural England, but is not recommended by NatureScot or the RSPB. The current evidence of a strong macro avoidance of wind farms by gannets, established from observed behaviour, is almost entirely derived from non-breeding birds (Cook 2021). The evidence for macro avoidance during the breeding season is limited with the exception of a single German study. It is, however, unclear from this study what the breeding status of the tracked birds was, or how their behaviour differed from what would have been expected pre-construction as two of the three wind farms were already operational during the first year of tracking. What the study does clearly show is that breeding Northern Gannets do fly through offshore wind farms, often showing no avoidance behaviour at all.</p> <p>As Northern Gannets can show macro avoidance Natural England recommend that a correction factor is applied to the baseline densities, and then collision risk modelling was carried out using an 'all gull' avoidance rate, so effectively applying avoidance twice.</p>

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			<p>The RSPB does not agree with the approach. Firstly, it does not consider seasonal variation. Secondly, by basing the 'within wind farm' avoidance rate on the 'all gull' rate, it assumes that Northern Gannets will have the same 'within wind farm' reactive flight response as gulls. This assumption is very unlikely to be met. This will result in a lesser ability to make rapid reactions and consequently have a greater risk of collision. This should be reflected in the 'within wind farm' avoidance rate if any further changes are to be made.</p> <p>Any evidence of macro avoidance should also be seen in the context of recent work in Belgian offshore windfarms that has shown potential habituation to the presence of turbines. This effectively results in lower macro avoidance and so an elevated risk of collision.</p> <p>The RSPB would also highlight that this approach is not agreed across the SNCBs, and NatureScot do not advise its use in the breeding season</p> <p>Consequently, the RSPB are concerned that the predicted Northern Gannet mortalities arising from collision are not robust, and therefore cannot come to any conclusions with regard to any adverse effects on site integrity.</p>

ExQ1	Question to:	Question	RSPB response
<b>ECOLOGY - ECOLOGICAL ENHANCEMENT</b>			
Q10.2.3	All relevant Council's (including Suffolk County Council/ East Suffolk District Council/ Essex County Council) Essex Wildlife Trust RSPB Natural England Forestry Commission National Trust Marine Management Organisation IPs	<p><b>Ecological Enhancement/ BNG Strategy</b></p> <p>(i) All relevant Council's (including Suffolk County Council/East Suffolk District Council/Essex County Council)/Essex Wildlife Trust/RSPB/NE/Forestry Commission/National Trust/IPs submit your views on seeking any further ecological enhancement/ facilitating BNG, or wider environmental gains inclusive of any future proofing (even if dual purpose for meeting wider design principles, climate change/adaption and resilience purposes) which may be desirable including regard expected local climatic conditions.</p> <p>(ii) Submit your views on boosting the level of BNG or other ecological enhancement proposals that could be delivered factoring all relevant local initiatives and scope to secure betterment. This may be linked to existing development plans, planned revisions to those, or stand-alone initiatives.</p> <p>(iii) Explain what scope remains for the scheme to further complement existing ecological enhancement initiatives within the local areas the scheme passes through; or which may be relevant to in-combination considerations; or wider ecological enhancement possibility.</p> <p>(iv) If relevant local/ regional or national initiatives have not been fully considered to</p>	The RSPB's Relevant Representation is focused solely on offshore ornithology matters and associated compensation requirements. Therefore, the RSPB has no comment to make with respect to terrestrial ecological enhancement and Biodiversity Net Gain matters.



ExQ1	Question to:	Question	RSPB response
		<p>date, provide an Examination update on how potential integration could be achieved.</p> <p>(v) The ExA specifically highlights that the scheme is projected to deliver a net loss for watercourses. Thus, further consideration should be given to BNG for watercourses in tandem with the above.</p> <p>(vi) NE – Biodiversity credits. The ExA acknowledges the Applicant's intention that if 'bespoke' mechanisms of off-site habitat enhancement or creation cannot be achieved in area habitat and hedgerow modules through consultation with relevant bodies and stakeholders on or off-site, biodiversity credits could be purchased through NE's register. Is there confidence from NE that scope for such contingency can/should be reasonably relied upon in those circumstances?</p> <p>(vii) The Applicant – Does the Applicant consider the use of the register to be 'likely'? What is the expected probability, at this stage, of the register mechanism being required and is it the Applicant's preferred/expected position to rely on the register mechanism or not? The Applicant is invited to demonstrate the likelihood/need for such an option being utilised within the Examination period.</p>	
<b>ECOLOGY - HABITATS REGULATIONS ASSESSMENT</b>			
Q10.3.1	The Applicant IPs Natural England	<p><b>Habitats Regulations/Derogation Implications</b></p> <p>(i) IPs/NE/Nature Scotland (NS)/RSPB/National Trust – Have all relevant designated sites</p>	Due to capacity constraints, the RSPB is unable to respond to question (i) at this time but will

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	Nature Scotland RSPB National Trust	<p>(including SACs/SPAs/Ramsar sites) been properly addressed inclusive of all defining features within the Applicant's ES and associated material? If not, state why not.</p> <p>(ii) The ExA notes that the Provision of Evidence Annex 1A HRA Compensation Consultation [APP-185] does not appear to have included NS as a consultee (even on a precautionary basis). Give your reasoning for this omission (deliberate or otherwise).</p> <p>(iii) IPs/NE/NS – Has the consultation undertaken been adequate? If not, explain your views for the Examination record.</p>	endeavour to include our answer to this question in our Written Representation when that is submitted.
Q10.3.12	RSPB Natural England Ips	<p><b>Compensation - Kittiwake</b></p> <p>The RSPB via its RR disagrees with the approach of excluding compensated for projects from 'in-combination' assessment considering paragraphs 17 and 18 in APP-192 (Habitats Regulations Assessment Appendix 4, Kittiwake Compensation Document).</p> <p>Although a further submission is indicated as expected from the RSPB, the ExA requests full and early specific clarification (by no later than Deadline 2) as to why the RSPB make such conclusions. Applicant/NE/IPs make whatever comments you deem necessary</p>	<p>The RSPB disagrees with the approach of excluding compensated for projects from "in-combination" assessments for the reasons set out below.</p> <p>Compensatory measures only enter the equation when it has been determined that there will be adverse effects on the integrity of the site (under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended)) or there is a lack of certainty as to the absence of adverse effects and the need for the competent authority to decide whether consent should be granted under regulation 64.</p> <p>It therefore follows that if compensation measures have been required for a project then that project has been identified as giving rise to potential adverse impacts on the integrity of a protected site. Therefore, potential adverse effects from that</p>

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			<p>project are also relevant when considering whether a later project is:</p> <ul style="list-style-type: none"> <li>- likely to have a significant effect on a designated site, whether on its own or in combination with other plans and projects, and subsequently</li> <li>- whether the competent authority can be satisfied that there will not be adverse effects on the integrity of the European site whether taken alone or in combination with other projects.</li> </ul> <p>It is difficult to see on what basis the fact that compensation has been (or will be) provided for potential adverse effects of the first scheme should mean that the effects of that scheme should be removed from the equation when carrying out the assessments required by regulation 63 for a later scheme, although it may well be relevant when considering whether consent should be granted under regulation 64 for the second scheme and/or what compensation measures should be required at that stage. There are two points we would stress in that context:</p> <ul style="list-style-type: none"> <li>- Firstly, the admonition of Advocate General Sharpston in <i>Sweetman (No 1)</i> at AG47. To exclude the adverse effects of scheme 1 when considering whether a later scheme would be likely to have significant effects / would not have an adverse effect on the integrity of a protected site in combination with other projects would seem to risk perpetuating the “death by a thousand cuts” phenomenon discussed in that case. (For the avoidance of doubt, we would</li> </ul>

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			<p>stress that the starting point would always need to be the scheme itself – and there would need to be some effect from the scheme which when combined with effects from the earlier scheme could give rise to likely significant effects / outcome); and</p> <ul style="list-style-type: none"> <li>- Secondly, the uncertainty as to the effectiveness of measures that are designed to compensate for (for example) loss of habitat rather than to mitigate the harm which might otherwise be caused: see C-164/17 <i>Grace v Sweetman</i> at 52-3.</li> </ul> <p>Such an approach would also seem inconsistent with the clear ruling of the CJEU in C-164/17 <i>Grace v Sweetman</i> that <i>compensatory</i> measures should not be taken into account at the Article 6(3) stage when carrying out an appropriate assessment for a particular project. It is difficult to see why the compensatory measures associated with an earlier scheme could, therefore, be taken into account (by effectively removing the adverse effects of scheme 1 from consideration) where the competent authority is deciding on a later scheme whether it was likely to have significant effects or would / would not have adverse effects on the integrity of the site in combination with other projects.</p>